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Attorneys for Defendant

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

JIMMIE STRINGER,

Plaintiff,

v.

DR. VANEIDA WHITE

Defendant.

No. C 07-5516 EDL

**UNITED STATES'S OPPOSITION TO
 PLAINTIFF'S MOTION TO REMAND
 TO SUPERIOR COURT**

I. INTRODUCTION

On October 30, 2007, the United States Attorney's Office filed a Notice of Removal removing Plaintiff's case to federal district court pursuant to 28 U.S.C. § 1441 (a), 1441 (b), 1441 (f) 2679 (d)(2) and 42 U.S.C. § 233 *et seq.* See Ex. A. Plaintiff Jimmie Stringer ("Plaintiff") alleges claims for medical malpractice, which fall within the scope of the Federal Tort Claims Act ("FTCA"); accordingly, the only proper defendant in this action is the United States. Actions pursuant to the FTCA should be brought in federal district court. Therefore, the United States opposes Plaintiff's Motion to Remand to Superior Court.

II. STATEMENT OF FACTS

On August 10, 2007, Plaintiff filed a form Complaint titled "Personal Injury, Property Damage, Wrongful Death" in Alameda County Superior Court against federal defendant Dr.

1 Vaneida White (“Dr. White”) of Lifelong Medical Clinic. *See* Ex. B Def. Motion to Dismiss.
2 Plaintiff alleges medical malpractice claims for strict liability, negligence, and gross negligence
3 against Dr. White. *Id.* Plaintiff alleges that on or about October 17, 2006, he went to Lifelong
4 Medical Clinic and was told that Dr. White did not want to see him. Plaintiff further alleges that
5 on or about February 9, 2007, Dr. White’s refusal to renew his DMV disability placard caused
6 him to lose his car and incur damages.

7 Plaintiff’s complaint suffers from several fatal jurisdictional defects. Absent from his
8 complaint are any allegations that Plaintiff complied with the exhaustion requirements set forth
9 in the FTCA. Moreover, Meredith Torres, a Senior Attorney in the General Law Division of the
10 Office of General Counsel of the Department of Health and Human Services, provided a
11 declaration stating that she searched for an administrative complaint submitted by plaintiff and
12 found none. *Id.* In addition, Plaintiff has failed to properly serve the United States. Although
13 the United States Attorney’s Office received a copy of the Summons and Complaint from the
14 Department of Health and Human Services on October 25, 2007, as of the date of this motion the
15 United States Attorney’s Office has not been properly served as required by Rule 4 of the Federal
16 Rules of Civil Procedure.

17 On November 2, 2007, the United States moved to dismiss Plaintiff’s complaint.¹

18 **III. ARGUMENT**

19 By his complaint, Plaintiff, seeks to hold Dr. White liable for medical malpractice. Dr.
20 White, is an employee of Lifelong Medical Clinic, which is a federally deemed health center
21 under the Federally Supported Health Centers Assistant Act (“FSHCAA”). 42 U.S.C. § 233 (g)-
22 (n). Pursuant to the FSHCAA, a deemed health center and its employees are covered under the
23 FTCA for alleged acts of negligence while acting within the course and scope of their
24 employment. 28 U.S.C. § 2671 *et seq.* Therefore, this action must be maintained in federal
25 district court pursuant to 42. U.S.C. § 233(c) of the FSHCAA.

26
27 ¹As discussed in Defendant’s Motion to Dismiss, because Plaintiff’s complaint fails to
28 satisfy several jurisdictional prerequisites, such as exhaustion of administrative remedies and
proper service; it should be dismissed without prejudice.

1 Additionally, this action must be maintained in federal district court pursuant to 28
2 U.S.C. § 2679(d)(2), because it is an action against Dr. White pursuant to the FTCA. Dr. White
3 was acting within the course and scope of her employment during the time alleged in the
4 complaint. Upon certification by the Attorney General, such an action shall be removed to the
5 district court at any time prior to trial. Pursuant to written delegation from Scott N. Schools, the
6 duly appointed United States Attorney for the Northern District of California, the Chief of the
7 Civil Division has been authorized to exercise on behalf of the United States Attorney the
8 authority vested in him by the Attorney General, pursuant to 28 C.F.R. § 15.3. The Chief of the
9 Civil Division has certified that Dr. White was acting within the course and scope of her
10 employment with Lifelong Medical Clinic. *See* Ex. B, Notice of Removal. This certification is
11 conclusive for purposes of removal. 28 U.S.C. § 2679(d)(2). Accordingly, this action should be
12 maintained in federal district court.

13 Finally, pursuant to 28 U.S.C. §§ 1441 (a), 1441 (b), 1441 (f) this action may properly be
14 removed to federal district court.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiff's Motion to Remand to Superior Court must be
17 denied.

18 DATED: NOVEMBER 26, 2007

Respectfully submitted,
SCOTT N. SCHOOLS
United States Attorney
/s/

MELISSA K. BROWN
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

UNITED STATES'S OPPOSITION TO PLAINTIFF'S MOTION TO REMAND TO SUPERIOR COURT

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to be served this date upon each of the persons indicated below at the address shown:

Jimmie Stringer, Pro se
P.O. Box 1421
Oakland, CA 94604

✓

BY FIRST CLASS MAIL by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

BY PERSONAL SERVICE (BY MESSENGER): I caused such envelope to be delivered by hand to the person or offices of each addressee above.

BY FACSIMILE (FAX): I caused each such document to be sent by facsimile to the person or offices of each addressee above.

BY E-MAIL: I caused each such document to be sent by e-mail to the person or offices of each address above.

BY FEDERAL EXPRESS

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed November 26, 2007 at San Francisco, California.

/s/
KATHY TERRY
Legal Assistant